Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	GN Docket No. 93-252
Implementation of Sections 3(n)	)	
and 332 of the Communications Act	)	
	)	
Regulatory Treatment of Mobile	)	
Services	)	

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

The record in this proceeding, which continues the Commission's efforts to address the impact of recent *Budget Act* amendments on technical, operational, and licensing rules for mobile services, demonstrates a remarkable degree of consensus. Initially, virtually all commenters opposed a general spectrum cap on CMRS spectrum. Commenters showed that there is no competitive basis for adoption of a general spectrum cap; that existing regulatory tools adequately protect against anticompetitive aggregation of spectrum; that a general spectrum cap is contrary to allowing the marketplace to dictate the provision of wireless services; and that attempting to implement a general spectrum cap is inadvisable in the context of an expedited proceeding. These comments provide compelling evidence that the public interest will not be served by the proposed cap on the aggregation of CMRS spectrum.

PCIA also believes there is broad support for a market area licensing scheme for 931 MHz messaging services. PCIA's comments include a basic framework for a market area licensing scheme, and PCIA will submit proposed industry consensus rules as soon as possible to effectuate the conversion from the existing transmitter-based licensing system for paging systems to licensing based on broad geographic regions. PCIA believes that it is critical in this proceeding to adopt a plan of market area licensing to reduce unnecessary regulation, streamline the expansion of service to the public, and facilitate wide area systems. It may be appropriate, however, to delay adoption of specific rule provisions to a subsequent further report and order in this docket, in order to accommodate development of rules supported by the industry and acceptable to the Commission.

PCIA's reply comments also note a number of areas of consensus on technical, operational, and licensing proposals by the Commission, as well as a few modifications

suggested by carriers to facilitate the provision of CMRS offerings. As discussed below, the record supports:

- Ensuring symmetrical regulatory treatment of competing mobile service providers as well as promoting further competition and economic growth and establishing an overall appropriate level of regulation for such services.
- Utilizing consumer demand-based and service-oriented factors to govern determinations as to what services are "substantially similar."
- Regulating wide-area SMR service and cellular service and private and common carrier paging as substantially similar for statutory purposes.
- Adopting Part 22-based assignment procedures for CMRS, including allowing licensees further flexibility to make minor system changes without prior Commission approval or notification.
- Conforming height/power limits for functionally similar services by raising height/power limits to a uniform threshold.
- Eliminating technical modulation requirements in favor of relying on emission mask requirements, and increasing licensees' flexibility in cases where the same entity operates two or more adjacent channels.
- Adopting the proposed 12 month basic construction timetable for all CMRS licensees except in cases where an extended construction timetable is approved.
- Modifying the definition of "availability of service to the public" to avoid requiring actual service to unaffiliated customers.
- Eliminating loading requirements, traffic studies, and all user eligibility limitations.
- Eliminating restrictions on permissible communications, as well as permitting liberalized use of common or private carrier facilities for incidental and auxiliary communications.
- Eliminating station identification requirements where interfering facilities can be identified from Commission records, and, in other cases, revising the requirement to require identification only once an hour, within five minutes of the hour, in either an analog or digital format.
- Allowing a greater division of responsibility between licensees and system managers.

- Extending EEO obligations to all CMRS carriers and retaining the 16 employee exemption.

- Accommodating the optional licensing of standby facilities for all CMRS operators, or eliminating the requirement that standby facilities must be licensed.

- Adopting a single modular application form for use by all CMRS and PMRS applicants, but deferring consideration of the content of such a form after the technical rules rewrite proceeding is completed.

- Adopting a new notification of status of facilities form, providing computer-generated notifications near the end of the construction period requesting confirmation that construction has been completed, and creating a uniform form for transfer of control and assignment applications.

- Requiring all CMRS licensees to pay licensing and regulatory fees on the same basis.

- Carefully limiting what constitutes "major" modifications or amendments; adopting the Part 22 procedures for modification of existing authorizations; and adopting restrictions limiting monetary payments to third parties to settle contested proceedings.

- Adopting general reforms to extend opportunities for pre-construction of CMRS facilities.

- Allowing pre-authorization operation of CMRS facilities through the use of blanket STAs to permit operation of facilities after public notice of the underlying facilities application.

- Adopting the proposed license term of ten years for all CMRS licensees, and extending the cellular renewal policies and procedures to all CMRS operators.

- Eliminating restrictions on the transferability of licenses.

- Extending comparable flexibility to provide both CMRS and PMRS offerings to all CMRS licensees.

- Creating a "finder's preference" to recapture unused spectrum.

- Permitting licensees to obtain one call sign, or more at the licensee's election, for all licensed transmitters.

- Adopting comparable forfeiture standards for all CMRS licensees, and revising the forfeiture guidelines to recognize the effects of the minimum forfeiture provisions on small CMRS operators.

- Elminating the microfiche requirements in favor of electronic filing procedures.

- Undertaking rule changes to the Part 21 and Part 94 rules in a *Third Notice of Proposed Rulemaking* in this proceeding to reform regulation of CMRS microwave systems.

PCIA believes that these changes, detailed below, will streamline administrative processing, accord further flexibility to licensees, and smooth the transition to a fair and level playing field in commercial mobile radio services. There are a few areas, however, where the consensus cautions against moving too rapidly. Most importantly in this regard, the record favors deferring action on such specifics as the content of the new application forms until after adoption of the technical rules.

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REPLY COMMENTS

The Personal Communications Industry Association ("PCIA") herewith submits its reply to comments filed in response to the above-captioned *Further Notice of Proposed Rulemaking*.[1] In this proceeding, the Commission seeks comment on rule changes necessary to ensure comparable regulatory treatment of substantially similar Commercial Mobile Radio Services ("CMRS"), as mandated by the Omnibus Budget Reconciliation Act of 1993 ("*Budget Act*").[2] While the initial comments in this docket reflect significant opposition to adoption of a spectrum cap, CMRS providers generally agreed with the large majority of the tentative rule changes suggested in the *Further Notice* and offered a number of constructive suggestions that appear to further both Congressional intent and general public policy objectives. Specific rule modifications to implement the purposes of the *Further Notice*, focused on the paging industry and including a basic framework for market area licensing of 931 MHz carriers, are discussed in further detail below.

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[1] *Regulatory Treatment of Mobile Services*, FCC 94-100 (May 20, 1994) [hereinafter *Further Notice*].

[2] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Tit. VI, § 6002(b)(2)(A)(iii), 107 Stat. 312, 393 (1993) [hereinafter *Budget Act*].

I. THE RECORD SUPPORTS THE COMMISSION'S EFFORTS TO ACCORD COMPARABLE REGULATORY TREATMENT TO SUBSTANTIALLY SIMILAR CMRS SERVICES

In this proceeding, the Commission seeks to implement the provisions of the *Budget Act* requiring comparable regulatory treatment of substantially similar CMRS offerings. In such respects, the Commission also properly identified promotion of competition and economic growth in wireless services and establishment of an overall appropriate level of regulation as goals to be pursued in this review of the Part 22 and Part 90 regulations. This ambitious proceeding, however, must be concluded within the Congressionally-mandated deadline for action by August 10, 1994.

In general, the comments have largely supported the Commission's proposed framework for transitioning to a level playing field for future competition in the CMRS market. In particular, the record demonstrates that the Commission's proposed criteria for determining what services are "substantially similar" properly focus on whether the CMRS providers in question compete to serve similar customer needs and demands.[3] The comments have also generally agreed that application of this criteria requires achieving comparable regulatory treatment between wide-area SMRS and cellular carriers[4] and between private and common carrier paging providers.[5]

Commenters have expressed broad agreement with the Commission's exhaustive catalog of proposals for achieving comparability between services. Filing parties have

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[3] AMTA at 6; New Par at 2-3; NYNEX at 3; Vanguard at 3-5.

[4] McCaw at 22-23; New Par at 4; Vanguard at 5-7.

[5] AirTouch/Arch at 3; McCaw at 23; NABER at 9; PageNet at 11-12; Vanguard at 7-8.

generally agreed that strict equivalency in technical regulations is neither necessary or desirable in all circumstances[6] and that the primary aim, at the present time, should be to ameliorate those regulatory differentials affecting competition that cannot be justified on a technical basis.[7] Similarly, commenters have expressed support for the Commission's proposed revisions to the licensing and operating requirements, and in some cases offered constructive suggestions designed to accord further flexibility to radio licensees. Each of these proposed revisions and areas of consensus are discussed below.

II. THE RECORD DEMONSTRATES THAT THE COMMISSION SHOULD NOT ADOPT A GENERAL CMRS SPECTRUM AGGREGATION LIMIT

The record before the Commission demonstrates conclusively that a general CMRS spectrum cap proposal is neither necessary nor desirable. Commenters have shown that there is no competitive rationale supporting adoption of a spectrum cap; that existing regulatory tools at the Commission's disposal adequately protect against any minimal potential for anticompetitive aggregation of spectrum; that spectrum caps are contrary to the principle of permitting marketplace conditions to dictate the provision of wireless services; and that attempting to address the broad range of practical problems associated with the implementation of a spectrum cap is inadvisable in the context of an expedited proceeding. These comments provide compelling evidence that the public interest will not be served by the proposed cap on the aggregation of CMRS spectrum.

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[6] PageNet at 6; SWB at 4.

[7] AirTouch/Arch at 3-4; McCaw at 24; PageNet at 6; SWB at 4.

First, comments have shown that there is no "enumeration of factual bases necessitating the imposition of a spectrum cap."[8] There has been no showing in the overall CMRS arena supporting the adoption of a spectrum cap.[9] Indeed, numerous carriers have noted that a large amount of spectrum is available for CMRS operations and "there is no shortage of licensing opportunities for multiple competitors."[10] A spectrum cap is also unnecessary given that anticompetitive action in the wireless market is highly unlikely in practice or in economic theory.[11] A number of commenters, in fact, have shown that a spectrum cap could affirmatively harm competition.[12]

In this regard, the record also shows that the narrowband CMRS market is substantially different from the broadband CMRS market[13] and includes substantial

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[8] GTE at 18.

[9] AMTA at 29-30; BellSouth at 6; Comcast at 9; Motorola at 4; NYNEX at 4; Onecomm at 9; PageMart at 6; RAM at 14; Roseville at 3.

[10] CTIA at 9. *See also* Century Cellunet at 2; GTE at 18-19.

[11] As AirTouch recognizes, collusion is not likely to occur in CMRS because: "(a) the actual and potential providers of CMRS services are too numerous and too diverse to have common interests that would bind them to any collusive course, (b) the rapid rate of technological change makes any collusive agreement difficult to achieve and sustain, (c) not all CMRS providers compete with each another, and (d) any licensee that engages in collusive behavior risks the loss of its license." AirTouch at 10-11. *See also id.* at 8-9 (stating that, based upon the dynamic growth and technological change taking place in CMRS services, "to overlay a unified, rigid structure on all CMRS providers" would be "irrational and unsupportable"); Comcast at 8.

[12] AirTouch at 7 (cap creates artificial and arbitrary restrictions on spectrum ownership or firm size limits); Comcast at 4 (a spectrum cap hinders both technological development and the growth of competition); GTE at 18 (a spectrum cap unduly restrains the legitimate activities of licensees); NABER at 37 (a spectrum cap thwarts the marketplace forces that have led to a competitive wireless communications infrastructure); Onecomm at 11 (cap hinders competition by impairing the ability of emerging competitors to obtain financing and build relationships with strategic partners); PageMart at 4 (a spectrum cap forces the CMRS industry to make investment decisions based on government regulation rather than consumer demand).

[13] APC at 2-3; Dial Page at 6; New Par at 16; Rural Cellular at 10.

affirmative evidence that the narrowband market is highly competitive.[14] The Rural Cellular Association, for example, properly observes that "narrowband services do not compete with broadband voice services" and concludes "[s]uch services constitute discrete markets and as such do not justify the adoption of an overarching spectrum cap."[15] Specifically examining the narrowband market, PageMart notes that "some 60 percent of the paging market is shared by more than 600 licensed paging companies."[16] PageNet, for its part, observes that "the number of competitors has increased in each local market, with an average of five competitive carriers among Radio Common Carriers, with many having as many as nineteen."[17] Under the circumstances, even if general or market-specific spectrum caps could be justified, any such caps should not apply to the narrowband CMRS market.

Second, the comments have shown that a general CMRS spectrum cap is unnecessary in light of the existing regulatory tools at the Commission's disposal to protect against any theorized harm from anticompetitive aggregation of spectrum. As a number of commenters discuss, construction and operation requirements exist for most services to prevent spectrum warehousing[18] and other regulations, such as enforcement powers under the Communications Act and antitrust laws, directly address the potential for anticompetitive action.[19] Most importantly, however, there are already limits on holding spectrum in

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[14] PageMart at 6-7; PageNet at 48; Rural Cellular at 9-10.

[15] Rural Cellular at 10.

[16] PageMart at 7.

[17] PageNet at 45.

[18] Century Cellunet at 2; GTE at 18-19; Motorola at 5-6.

[19] Comcast at 12; PageMart at 4-5; PageNet at 47.

specific services.[20] To the extent that spectrum caps are justifiable at all, service specific caps are infinitely preferable, since addressing spectrum restrictions in a specific context allows the Commission to consider the totality of the factors associated with a particular frequency allocation prior to determining a cap, and thus to tailor restrictions more narrowly to any competitive concerns that may, or may not, arise.[21]

Third, a spectrum cap is incompatible with allowing the marketplace "to self-manage access to the spectrum."[22] A spectrum cap unnecessarily hinders "available spectrum being utilized according to its highest economic use by preventing incumbent carriers from using additional spectrum to add value to their existing networks and customers."[23] Indeed, a general spectrum cap restricts precisely those existing wireless providers that are best suited to address the public's wireless needs[24] and are most likely to fund new services.[25] Excluding participation by these companies will adversely affect the public interest by delaying the introduction of new CMRS services[26] and preventing the development of

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[20] AMTA at 28-32; Dial Page at 3; GTE at 19-20; Motorola at 4-5; Onecomm at 8-11; TRW at 1-2.

[21] AirTouch at 9; APC at 1-2; B&S at 16; Century Cellunet at 3; Comcast at 3, 6; GTE at 18; McCaw at 12-14; Motorola at 7; NYNEX at 5-6; Onecomm at 8, 10; PCIA at 7-9; SWBT at 5-8, 16.

[22] TRW at 3. *See also* PageNet at 4 and SBT at 6 (both stating that spectrum caps are inconsistent with the Commission's commitment to "establish a regulatory regime in which the marketplace, and not the regulatory arena, shapes the development and delivery of mobile services," citing the *Further Notice*, ¶ 10).

[23] CTIA at 9. *See also* Century Cellunet at 3; Nextel at 24 (stating "it would be counterproductive for the Commission to become straitjacketed into a narrow view of relevant product markets" and that "[s]uch a view . . . would only serve to impede market integration and the migration of spectrum to its highest and most economic use"); NYNEX at 5.

[24] Century Cellunet at 3-4; Motorola at 6.

[25] Dial Page at 4.

[26] Century Cellunet at 3-4; NYNEX at 5.

technological advancements.[27] As noted by a number of carriers, spectrum caps are also inconsistent with the use of competitive bidding as a means of licensing spectrum, since the avowed goal of the auction process is to "place licenses in the hands of the parties able to use them most efficiently."[28]

Finally, a spectrum aggregation cap creates numerous practical implementation problems.[29] As Southwestern Bell states, "[t]here are simply too many unknowns for the Commission to attempt to develop such a cap at this time."[30] These questions present exceedingly thorny and complex issues that simply should not be undertaken in the context of a rulemaking, such as this one, where a very aggressive Congressionally-mandated schedule applies.[31]

In sum, to extend a general spectrum cap to all CMRS services "would be arbitrary and capricious and would lack any basis in economic theory, antitrust law or fact."[32] Based upon the level of reasoned opposition to general spectrum caps, PCIA believes the

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[27] GTE at 19; Motorola at 6.

[28] Celpage at 21-22; Metrocall at 21-22; Network USA at 21-22; RAM Tech at 20-21 (all citing *Further Notice*, ¶121).

[29] Century Cellunet at 3 n.2; Comcast at 7 (a uniform CMRS spectrum aggregation limit will disrupt the current operations of non-cellular CMRS providers and force those providers to divest portions of their spectrum holdings); GTE at 18 (listing questions, including "[w]hat spectrum should be included within the cap?"; "[h]ow should the cap be applied with respect to geographic areas?"; "[s]hould geographic overlap be considered in calculating attributable interests?"; "[h]ow should the cap be applied to designated entities?"; and, "[h]ow should divestiture of ownership interests in violation of the spectrum cap be handled?"); McCaw at 10-11 (may prevent cellular and broadband PCS providers from participating meaningfully in the CMRS marketplace); Onecomm at 8-9; SBT at 7-8.

[30] SBT at 8.

[31] CTIA at 9.

[32] AirTouch at 6; *see also* TRW at 2.

Commission should not adopt the *Further Notice* proposal to apply a CMRS spectrum aggregation limit.

III. REFORMING TECHNICAL AND OPERATIONAL RULES TO ACHIEVE COMPARABLE REGULATION FOR SUBSTANTIALLY SIMILAR CMRS OFFERINGS

A. Technical Rule Change Proposals

As PCIA suggested in its initial comments, absolute identity of technical rules governing various CMRS operations is not mandated by the *Budget Act*. More important is ensuring that the technical rule differentials that persist do not provide competitive advantages to any class of carriers. In furtherance of this objective, and the related goals of minimizing regulation and promoting growth in wireless services, PCIA believes it is necessary to adopt a scheme of market area licensing for 931 MHz services and to implement other reforms. Each of these proposals is discussed briefly below.

1. The comments support adopting market-based area licensing for 931 MHz paging systems

In the opening comments, PCIA and other parties argued that the public interest would be served by the adoption of a market-based licensing scheme for 931 MHz paging systems[33] and an extended implementation schedule for such systems.[34] Adopting wide-area market license areas "eliminat[es] unnecessary information collection requirements,

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[33] AirTouch/Arch at 9; NABER at 24; PageNet at 14-16.

[34] AirTouch/Arch at 5, 11; PageNet at 25-26.

streamlin[es] licensing procedures, and reduc[es] the processing and review burden on Commission staff."[35] At that time, PCIA indicated that it was in the process of forging an industry consensus proposal for market-based licensing in the 931-932 MHz band. Consistent with its commitment, PCIA is proposing a basic framework for market-area licensing of radio common carrier paging systems. PCIA will file, as soon as practicable, a consensus rules proposal that effectuates this proposed framework.

PCIA's plan proposes market regions for paging systems in the 931 MHz band for regions based on states, Rand-McNally Major Trading Areas, or similarly sized geographic areas. Under this plan, a carrier with a market area authorization would not be subject to mutually exclusive applications filed by new applicants seeking facilities within the market boundaries. Co-channel carriers in adjacent markets, however, would be permitted to file applications seeking to construct and operate facilities within the adjacent market that are deemed mutually exclusive with the new facilities proposal because the applications do not meet minimal separations distances and mutual consents have not been negotiated. In order to assure the availability of service, carriers with market area authorizations would be required meet minimal build-out requirements, not conceptually dissimilar to the Private Carrier Paging exclusivity structure.[36] Unless a carrier applies for an extended

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[35] Comments of AirTouch Paging, CC Docket 92-115, at 2 (filed June 20, 1994) (*Part 22 Rewrite* Comments).

[36] In this regard, PCIA believes that the Commission should also act expeditiously in this proceeding to implement consensus revisions to the PCP exclusivity scheme proposed in several pending petitions for reconsideration of the Commission's action in that proceeding. Of particular importance are the changes to the exclusivity regime to implement state based licensing and to allow the use of increased power levels.

implementation schedule, the carrier would be required to satisfy the construction requirements within one year.

A transition to the market-based plan should provide priority for existing carriers operating within the region. Carriers already in operation should be permitted to submit applications that bring their systems into conformity with the construction requirements for new market area licenses. While PCIA's plan would generally allow carriers that do not elect to -- or cannot -- bring their systems into conformity with the new requirements to continue operating, the plan would not permit such carriers to modify their systems to expand their area of operation. PCIA is currently forging an industry consensus proposal, consistent with this approach, to ensure that existing operations do not unnecessarily preclude any other carriers from obtaining market authorizations. PCIA's approach would also address those situations where more than one co-channel carrier is eligible for a market authorization by granting all co-channel carriers similar rights.

PCIA's rules proposal will contain a number of other provisions to streamline application processing and facilitate the expansion of service. In particular, the rules will implement procedures that allow carriers to:

- File maps describing the outer contour of their system only;
- Construct and operate new facilities or modify existing facilities entirely contained within their existing contours, under certain circumstances, without prior Commission notification or approval;
- Operate at up to 3500 watts ERP without height restrictions; and,
- Construct and operate facilities otherwise not in accordance with the separation table with the consent of other affected carriers.

The proposal will also implement another suggestion advanced by PCIA in its original comments in this docket from the *Part 22 Rewrite*, requiring FCC Form 489 filings when a carrier decreases its outer composite service contour.

PCIA believes this framework provides substantial benefits to the Commission by reducing administrative burdens. The proposal also benefits carriers, by providing further flexibility and ability to expand networks of paging systems to meet customer demands most effectively, and the public, by improving the quality and availability of messaging services. At minimum, the Commission should promptly adopt rules that establish market area licensing as the method of authorization for 931 MHz facilities. Specific rules in order to put such a scheme in place could be adopted by means of a further order in this docket. To this end, PCIA is working promptly yet thoroughly in order to develop a consensus proposal involving specific rule provisions that would effectively implement the licensing structure proposed in these comments. Upon establishing such industry consensus, the proposal will be forwarded to the Commission for its consideration.

2. *The record demonstrates substantial consensus on a broad number of technical rule changes*

In its opening comments, PCIA discussed the exhaustive list of technical changes proposed to achieve the Commission's goals of realizing regulatory parity between substantially similar services, promoting competition and growth in mobile services, and minimizing unnecessary regulation. Consistent with PCIA's recommendations, the record shows that most of the proposed technical rule changes should be adopted:

- ***Antenna height and power limits.*** The commenters have broadly favored rule changes to achieve parity in antenna height and power limits.[37] Specifically, consistent with PCIA's suggestions, the comments advocate adopting the same power levels for 900 MHz PCP operators as for 900 MHz RCCs,[38] adopting increased power limits suggested in CC Docket No. 93-116 for 900 MHz RCC and PCP operations,[39] and implementing any necessary revisions to the co-channel protection criteria.[40]

- ***Modulation and emission requirements/emission masks.*** Commenters have agreed that there is no need to continue emission restrictions in services where frequencies are licensed on an exclusive basis as long as licensees comply with requirements that guard against co-channel interference.[41] Commenters have also specifically supported PCIA's proposed rule change allowing carriers to use two or more adjacent channels as one wideband channel.[42]

- ***Interoperability.*** The commenters have virtually uniformly opposed mandating any additional interoperability standards.[43] As discussed in a number of comments, the industry has proven itself capable of developing industry consensus standards where necessary and appropriate without regulatory intervention.[44]

B. Operational Rule Change Proposals

The record also demonstrates near uniformity with respect to equalizing operational requirements for CMRS providers. Commenters generally agreed that, where possible,

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[37] B&S at 9-10; GTE at 11-12; New Par at 7-8; PageNet at 21-23; SWB at 11.

[38] AirTouch/Arch at 10; B&S at 9-10; GTE at 11-12; PageNet at 21-23.

[39] AirTouch/Arch at 10; B&S at 9-10; PageNet at 21-23.

[40] AirTouch/Arch at 9.

[41] CTIA at 3; McCaw at 27-28; NABER at 28; Nextel at 40; PageNet at 20-21, 23.

[42] NABER at 26; Nextel at 40; PageNet at 20-21.

[43] APC at 4-5; Ericsson at 3; Geotek at 19; NABER at 28-29; New Par at 9; PageNet at 24; Pittencreif at 10; RAM at 8; Simron at 11; SWB at 12-13.

[44] Ericsson at 3; New Par at 10; PageNet at 24.

operational restrictions should be eliminated in favor of flexibility. In cases where public policy supports maintaining existing operational requirements, the comments advocated extension of the obligations uniformly to all CMRS providers:

- ***Construction period and coverage requirements.*** Commenters supported the FCC's proposal to adopt a uniform 12-month construction period for CMRS licensees under both Parts 22 and 90, except in specific services where a longer time period is authorized.[45] The comments also supported revising the definition of "commencement of service," as the FCC has suggested, but with the modifications proposed by PCIA to eliminate the actual service to subscribers requirement[46] and implement "reminder" notifications to licensees at the end of their construction period.[47]

- ***Loading requirements.*** The comments universally supported the Commission's proposal to eliminate loading requirements, additional channel studies, and related provisions.[48]

- ***End user eligibility.*** The record broadly supported elimination of end-user eligibility limits, to the extent that such limits continue to exist.[49]

- ***Permissible uses.*** While the comments favored achieving parity in permissible use regulations, a number of commenters properly observed that symmetry in regulation mandates allowing Part 22 providers to offer dispatch services;[50] deleting Section 22.119, as recently proposed by the Commission, which restricts common carrier base transmitters from being used for non-common

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[45] AirTouch/Arch 5; AMTA at 7; Celpage at 15-16; Geotek at 19; Metrocall at 15; NABER at 30; Network USA at 15-16; NYNEX at 4; PageNet at 25; PCC at 8; Pittencrief at 11; RAM at 10; RAM Tech at 15-16.

[46] McCaw at 28. *See also* Celpage at 15-17; Metrocall at 15-17; NABER at 30-31; Network USA at 15-16; PageNet at 26; RAM Tech at 15-17.

[47] NABER at 31.

[48] AirTouch/Arch at 11; AMTA at 11-13 (& 40 mile rule); B&S at 13-14; Celpage at 19; Geotek at 21; Metrocall at 17-18; Network USA at 18; PageNet at 27; Pittencrief at 11; RAM at 10; RAM Tech at 18; Southern at 7; WJG at 6-7.

[49] Celpage at 19; Metrocall at 19; NABER at 33; Network USA at 19; Nextel at 49; PageNet at 27; Pittencrief at 12; RAM at 10; RAM Tech at 18; Southern at 10; U S West at 9.

[50] Bell Atlantic at 6; BellSouth at 14-15; GTE at 12.

carrier purposes;[51] and, allowing all CMRS providers equal flexibility to offer fixed services.[52]

- ***Station identification.*** The record generally supports deletion of the station identification requirements to the greatest extent possible.[53] In services where these requirements are maintained, PCIA and others suggested revising the requirements to require station identification only once an hour, within 5 minutes of the hour as end user communications permit.[54] In addition, a number of carriers advocated, and PCIA supports, permitting all carriers to comply with the station identification using digital transmission techniques.[55]

- ***General licensee obligations.*** In its original comments, PCIA observed that general licensee obligations were similar for both Part 22 and Part 90 licensees, but noted that Part 90 licensees may be accorded a greater degree of flexibility in negotiating management agreements. PCIA and others accordingly urged the Commission to investigate allowing Part 22 flexibility similar to Part 90 licensees.[56]

- ***Equal employment opportunities.*** The record generally supports extending equal employment obligations to all CMRS providers uniformly.[57] As advocated by PCIA, however, the record also showed broad support for ensuring the continuation of the 16 employee exemption or, for that matter, raising the employee exemption to a higher standard.[58]

In addition, PCIA's opening comments suggested reforming the rules on standby transmitters to allow reclassified Part 90 service providers equivalent flexibility to license

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[51] CTIA at 7; GTE at 5; New Par at 12.

[52] Bell Atlantic at 5; GTE at 5, 12; McCaw at 29-30.

[53] B&S at 15; Pittencrief at 13; RAM at 10.

[54] NABER at 34; PageNet at 28.

[55] Celpage at 19-20; Metrocall at 19; NABER at 34; Network USA at 19; PageNet at 29; PCC at 9; RAM Tech. at 19.

[56] McCaw at 30; NABER at 35.

[57] Bell Atlantic at 13; BellSouth at 20; Celpage at 20; McCaw at 30; Metrocall at 20; NABER at 36; Network USA at 20; New Par at 16; Nextel at 43; RAM at 11; RAM Tech at 19.

[58] AMTA at 8; Celpage at 20; Metrocall at 20; NABER at 36; Network USA at 20; RAM Tech at 19.

alternate facilities. Although this suggestion was not part of the *Further Notice* proposals, similar proposals were supported by a few commenters on their own initiative.[59] PCIA believes that achieving parity in this regard is meritorious, and suggests either adopting a rule based on Section 22.107 for reclassified Part 90 CMRS providers or, as PageNet has suggested, allowing both Part 22 and Part 90 licensees to construct standby facilities without a separate authorization.[60]

IV. LICENSING RULES AND PROCEDURES

A. Application Forms and Procedures

The record also demonstrates substantial support for a revised single form for all CMRS and PMRS applications.[61] The use of a single, modular form for new facilities applications will offer great benefits in preparation, processing, and automation. As PCIA argued, however, specific discussion of the new form provisions should be deferred until after the rulemaking is concluded.[62] At that time, PCIA and others urge the Commission to consider adopting new forms for assignments and transfers of control and for facilities status notifications.[63]

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[59] PageNet at 29.

[60] PageNet at 29.

[61] AirTouch/Arch at 5; Bell Atlantic at 13-15; GTE at 13; McCaw at 31-32; NABER at 38.

[62] AirTouch/Arch at 5-6; AMTA at 35; McCaw at 31-32.

[63] McCaw at 33-34; PageNet at 30-31 (suggesting revisions to the transfer of control and assignment forms to eliminate the requirement for filing copies of authorizations and noting that disparities exist with respect to qualifying information required of Part 22 and Part 90 licensees).

Notwithstanding PCIA's belief that consideration of the new form should be deferred until after the rulemaking is concluded, PCIA notes that commenters have already proposed a number of revisions to the proposed form that warrant consideration. These suggestions, which PCIA supports and believes should be incorporated in to the Commission's subsequent consideration of appropriate forms, include:

- The *Further Notice* limits disclosures relating to revoked licenses to controlling parties but Form 600 does not;[64]
- The FCC has not addressed conforming burdens requiring Part 22 applicants to disclose huge numbers of insignificant ownership interests under the real party in interest rules;[65]
- Moving items 18, 23, 24, 25, 30, 31, 32 and 33 to Schedule A, since they apply only to CMRS;[66]
- Compressing all forms to fit on an 8 1/2" x 11" page by, for example, compressing the applicant information to the size used on FCC Form 574;[67]
- Moving the tower sketches to the instructions on Schedule B;[68]
- Including on the form the type of filing, control point information, and other entries that apply to nearly all filings;[69]
- Clarifying the distinction between C22 (distance to SAB) and C23 (distance to CGSA).[70]

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[64] Bell Atlantic at 14. *See also* PageNet at 32.

[65] Bell Atlantic at 14-15.

[66] NABER at 38.

[67] *Id.* at 38.

[68] *Id.* at 40.

[69] *Id.* at 39.

[70] SWB at 14.

- Resizing the filing fee boxes to provide adequate space;[71]
- Deaggregating multiple items of data under one item number to facilitate preparation and automated processing of the form;[72]
- Replacing item A1 on Schedule A with several check boxes rather than one long box;[73]
- Eliminating items A12-A17 on Schedule A (facilities not constructed), which are duplicative of information requested elsewhere;[74]
- Deleting item B2 of Schedule B, which requests information not available to the public (FCC tower number);[75]
- Deleting item B3 of Schedule B (FAA Study No.), which requests information sought on Schedule F;[76]
- Deleting items B13-16 and C13-16 (old transmitter location), which appear to be unnecessary;[77] and,
- Revising Schedule D to provide sufficient spaces for multiple responses.[78]

B. Other Proposed Licensing Changes

The comments strongly support PCIA's proposals for achieving parity in licensing procedures. Specifically, both existing Part 22 providers and newly reclassified Part 90

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[71] B&S at 28.

[72] *Id.* at 28-29.

[73] *Id.* at 29-31.

[74] *Id.* at 30.

[75] *Id.* at 31.

[76] *Id.*

[77] *Id.* at 33.

[78] *Id.* at 34.

CMRS providers agreed with PCIA on the appropriate licensing changes necessary to effectuate Congressional intent:

- ***Application Fees.*** Commenters generally support achieving parity in application fees.[79] Commenters have noted, however, that parity does not dictate inflexibly imposing the existing common carrier fee schedule on all CMRS providers.[80] As PCIA suggested, the fee schedule should be revised to achieve greater symmetry by recognizing the coordination costs borne by some categories of carriers.[81] Where coordination is the responsibility of the applicant, Commission activities are necessarily reduced, and the application fee levels should be adjusted to account for this fact.

- ***Regulatory Fees.*** The record also supported according equal treatment for all CMRS providers under the Commission's regulatory fee schedule.[82] More specifically, the comments suggest that, in light of the reformation of regulations undertaken in this docket that reduce obligations for all carriers, the regulatory fee tables for common carriers should be amended to more closely approximate the fee schedule for private radio users.[83]

- ***Application of Section 309 to the Licensing of Newly Reclassified Part 90 CMRS Facilities.*** Commenters generally agreed that use of Part 22 procedures under Section 309 was appropriate, if not mandated by the *Budget Act*.[84] In this regard, commenters supported the use of auctions to resolve

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[79] AirTouch/Arch at 6; AMTA at 36-37; Bell Atlantic at 15; CTIA at 5; McCaw at 34; NABER at 40-41; New Par at 20.

[80] AirTouch/Arch at 6 (recommending use of private radio fees); AMTA at 36-37; Bell Atlantic at 15 (allow waivers in the case of hardship); Celpage at 25; Metrocall at 25; NABER at 41; Network USA at 25; RAM Tech at 25.

[81] NABER at 41; PageNet at 29-30 (also concurring with PCIA's suggestion to evaluate frequency coordination for Part 22 licensees to improve the speed of service).

[82] Bell Atlantic at 15; B&S at 20; CTIA at 5; McCaw at 34; New Par at 20; Nextel at 48. As a related matter, PCIA notes that the current fees proposal would require some carriers to pay fees for several years in advance. To the extent that these carriers become subject to a different fees schedule due to regulatory reclassification, equitable treatment requires that refunds or credits be provided to carriers that have made such advance payments.

[83] AirTouch/Arch at 6; PageMart at 14.

[84] AirTouch/Arch at 6-7; AMTA at 40-41.

mutual exclusivity among CMRS providers,[85] but also provided strong support for limiting the range of applications that are considered major modifications and thus subject to mutually exclusive filings.[86] Many commenters expressed serious reservations about "first come, first served" licensing as unnecessary and potentially stimulating illicit filings in the absence of appropriate safeguards.[87] Finally, PCIA suggests adopting provisions limiting settlement payments to provide disincentives for filing strike petitions.

- ***Pre-Authorization Construction.*** Consistent with PCIA's opening comments, most commenters favored extended the opportunities for carriers to engage in pre-authorization construction at their own risk.[88] Among other things, extending the range of situations where pre-authorization construction is an available option will lead to faster service to the public without any detrimental consequences.[89]

- ***Conditional and Special Temporary Authority ("STA").*** The record also supports considering allowing pre-authorization operation for CMRS operators.[90] As shown in the private radio service, where such authority is routinely granted, allowing pre-authorization operation is practical and has many benefits for both carriers and the public at large.[91] PCIA, like many others, suggested that such authority could be implemented through the use of Blanket Special Temporary Authority.[92]

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[85] AirTouch/Arch at 14.

[86] *Id.* at 15; AMTA at 37, 40-41; McCaw at 36-37; NABER at 44; PageNet at 40-41; PCC at 14; Simron at 19-23; SMR Systems at 2-8.

[87] AirTouch/Arch at 14; BellSouth at 16-17; PageNet at 34-40.

[88] AirTouch/Arch at 12; AMTA at 42; BellSouth at 19-20; CTIA at 5; GTE at 15.

[89] AirTouch/Arch at 12.

[90] *Id.* at 13 (with provision for shut off by FCC); CTIA at 5-6; Celpage at 26-28; Metrocall at 27; NABER at 45; Network USA at 27; PageNet at 42-44; RAM Tech at 27; Southern at 13.

[91] AMTA at 42-43; NABER at 45; PageNet at 42-44.

[92] PageNet at 43.